United States Department of Labor
Employees' Compensation Appeals Board

D.R., Appellant	)	
and	)	**Docket No. 17-1127**
	)	**Issued: September 15, 2017**
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PROTECTION, El Paso, TX, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 1, 2017 appellant filed a timely appeal from a March 20, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish a traumatic injury in the performance of duty on January 12, 2017, as alleged.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence after OWCP rendered its March 20, 2017 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision and therefore, this additional evidence cannot be considered on appeal. 20 C.F.R. § 501.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

FACTUAL HISTORY

On January 30, 2017 appellant, then a 41-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on January 12, 2017 he sustained a nose bleed. On the reverse side of the form, the employing establishment checked the box marked "no" when asked if he was injured in the performance of duty, explaining that his condition was due to a preexisting medical condition. It further reported that appellant's supervisor witnessed appellant arrive with a nose bleed prior to the start of his work shift. Appellant stopped work on the date of injury.[3]

By letter dated February 13, 2017, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the factual and medical evidence needed and asked to respond within 30 days. OWCP informed him that the evidence was insufficient to establish that he actually experienced the incident or employment factor alleged to have caused injury, there was no diagnosis of any condition, nor was there a physician's opinion as to the cause of his injury. It provided a questionnaire for completion and requested he submit a response in order to substantiate the factual basis of his claim. The questionnaire requested that appellant describe what he was doing at the time the injury occurred, the immediate effects of the injury and what he did thereafter, describe his condition between the date of injury and the date he first received medical attention, whether he sustained any other injury, either on or off duty, between the date of injury and the date it was first reported, the nature and frequency of any home treatment, whether he was claiming an occupational disease or traumatic injury, and to provide statements from any persons who witnessed his injury or had immediate knowledge of it. Appellant was afforded 30 days to provide the requested information. He did not respond to the questionnaire.

In a January 17, 2017 medical report, Dr. Bassam Al-Homsi, a treating physician, reported that appellant had been experiencing nose bleeds for a couple of weeks, along with headaches and high blood pressure. The physician noted that the nose bleeds were daily and diagnosed epistaxis and essential hypertension. In a January 17, 2017 attending physician's report, Dr. Al-Homsi diagnosed epistaxis and checked the box marked "no" when asked if he believed that the condition was caused or aggravated by the employment activity.

In a February 13, 2017 work capacity evaluation (OWCP-5c), Dr. Al-Homsi released appellant to full duty without restrictions effective February 18, 2017.

By decision dated March 20, 2017, OWCP denied appellant's claim finding that the evidence of record failed to establish that a January 12, 2017 employment incident occurred as alleged. It noted that he failed to respond to the questionnaire that was sent with the February 13, 2017 development letter.

[3] The record reflects that appellant has four prior traumatic injury claims with a date of injury ranging from April 1, 2012 through July 28, 2016. The record before the Board contains no other information pertaining to appellant's prior claims.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[5]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[6] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

When an employee claims that he sustained an injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged. He must also establish that such event, incident, or exposure caused an injury.[7] Once an employee establishes that he sustained an injury in the performance of duty, he has the burden of proof to establish that any subsequent medical condition or disability for work, for which he claims compensation is causally related to the accepted injury.[8]

To establish that, an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on the employee's statements. The employee has not met his burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[9]

---

[4] *Gary J. Watling*, 52 ECAB 278 (2001).

[5] *Michael E. Smith*, 50 ECAB 313 (1999).

[6] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). *See Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

[8] *Supra* note 4.

[9] *Betty J. Smith*, 54 ECAB 174 (2002).

ANALYSIS

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a traumatic injury in the performance of duty on January 12, 2017, as alleged.[10]

Appellant's presentation of the facts is not supported by the evidence of record and does not establish his allegation that a specific event occurred which caused him a nose bleed on the date in question.[11] He has not provided sufficient detail to establish that a traumatic incident occurred as alleged.[12] On his Form CA-1 appellant stated that he developed a nose bleed on January 12, 2017 with no further details pertaining to his claim. His vague description of the traumatic incident fails to provide any detail to determine how he sustained his injury.[13]

By letter dated February 13, 2017, OWCP requested appellant describe the factual circumstances of his injury and provided him with a questionnaire for completion. Appellant did not respond to the questionnaire and failed to provide a narrative statement detailing the traumatic incident.[14] The only explanation provided pertaining to the alleged January 12, 2017 traumatic incident was the vague statement noted in his Form CA-1. By failing to describe the employment incident and circumstances surrounding his alleged injury, appellant has not established that the traumatic injury occurred as alleged.[15]

Moreover, the employing establishment controverted the claim arguing that appellant's injury was the result of a preexisting condition, reporting that appellant's supervisor witnessed him arrive with a nose bleed prior to the start of his shift.

The medical evidence of record further casts serious doubt upon the validity of appellant's claim.[16] In his January 17, 2017 report, Dr. Al-Homsi reported that appellant had been experiencing nose bleeds for a couple of weeks. This report fails to provide support for a traumatic injury having occurred from a single occurrence within a single workday as alleged by appellant in this claim.[17] Moreover, his January 17, 2017 attending physician's report found that appellant's epistaxis condition was not caused or aggravated by his employment.[18] Thus, the

[10] *J.L.*, Docket No. 16-1114 (issued October 25, 2016).

[11] *T.R.*, Docket No. 12-0012 (issued May 16, 2012).

[12] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[13] *See C.M.*, Docket No. 17-0627 (issued June 28, 2017).

[14] *See C.E.*, Docket No. 17-0106 (issued April 20, 2017).

[15] *P.T.*, Docket No. 14-0598 (issued August 5, 2014).

[16] *M.W.*, Docket No. 12-1013 (issued October 24, 2012); *David J. McDonald*, 50 ECAB 185 (1990).

[17] A traumatic injury means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

[18] *B.S.*, Docket No. 13-0405 (issued July 18, 2013).

Board finds that the record lacks factual evidence to support appellant's allegation that he sustained an injury in the performance of duty on January 12, 2017.[19]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.[20] An award of compensation may not be based on surmise, conjecture, or speculation.

On appeal, appellant responded to OWCP questionnaire explaining why his injury was work related and described the details surrounding the employment incident. As previously noted, this evidence cannot be considered by the Board as it was not submitted prior to OWCP's March 20, 2017 decision.[21]

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a nose bleed in the performance of duty on January 12, 2017, as alleged.

[19] *David R. Clark*, Docket No. 16-0083 (issued March 8, 2016).

[20] *Daniel O. Vasquez*, 57 ECAB 559 (2006).

[21] *Supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the March 20, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 15, 2017
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board